



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
State Capitol Complex
Building 6, Room 817-B
Charleston, West Virginia 25305
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Jolynn Marra
Interim Inspector General

January 20, 2021



RE: [REDACTED] v. WVDHHR
ACTION NO.: 20-BOR-2620

Dear Mr. [REDACTED]:

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

In arriving at a decision, the Board of Review is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

You will find attached an explanation of possible actions that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Angela D. Signore
State Hearing Officer
State Board of Review

Enclosure: Appellant's Recourse
Form IG-BR-29
cc: Tamra Grueser, BoSS

**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW**

██████████,

Appellant,

v.

ACTION NO.: 20-BOR-2620

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on January 5, 2021, on an appeal filed October 22, 2020.

The matter before the Hearing Officer arises from the September 23, 2020 determination by the Respondent to deny the Appellant's Medicaid Aged and Disabled Waiver (ADW) Program application.

At the hearing, the Respondent appeared by Tamra Grueser, RN, Bureau of Senior Services (BOSS). Appearing as a witness for the Department was Braden Scheick, RN, KEPRO. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 West Virginia Department of Health and Human Resources (WVDHHR) Bureau of Medical Services (BMS) Aged & Disabled Waiver Services Policy Manual §§ 501.9.1, 501.9.1.2
- D-2 Notice of Decision: Potential Termination, dated September 23, 2020
- D-3 Notice of Decision: Final Termination, dated October 08, 2020
- D-4 Pre-Admission Screening (PAS) Summary dated September 23, 2020, and PAS Summary submitted on September 23, 2020

Appellant's Exhibits:

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) The Appellant was a participant in the Aged and Disabled Waiver (ADW) Program and received Personal Attendant (PA) services.
- 2) On September 23, 2020, KEPRO RN, Braden Scheick (Mr. Scheick), completed a Pre-Admission Screening (PAS) with the Appellant by telephone. (Exhibit D-3)
- 3) The Appellant, Mr. Scheick, and the Appellant's son-in-law (Mr. [REDACTED]) were present during the completion of the PAS. (Exhibit D-3)
- 4) On September 23, 2020, KEPRO issued a notice advising the Appellant that he was found to be ineligible for the ADW program due to lacking deficits in at least five (5) critical areas. (Exhibit D-2)
- 5) The September 23, 2020 notice advised the Appellant of potential termination of ADW services due to unmet medical eligibility and provided a two-week deadline for submitting additional medical information for consideration. (Exhibit D-3)
- 6) On October 08, 2020, a Notice of Decision: Final Denial was sent to the Appellant advising he did not meet medical eligibility criteria in at least five (5) critical areas as required by policy for participation in the ADW program. (Exhibit D-3)
- 7) The Appellant's Representative argued additional deficits should have been awarded in the areas of *eating, bathing, dressing, continence, walking, and vision*.
- 8) The Appellant is a Level 2, physical assistance, in the area of *bathing*.
- 9) The Appellant is a Level 2, physical assistance, in the area of *dressing*.

APPLICABLE POLICY

Bureau for Medical Services (BMS) Provider Manual, Chapter 501: Aged and Disabled Waiver (ADW), § 501.9 Medical Eligibility provides, in part:

The Utilization Management Contractor (UMC) is the entity that is responsible for conducting medical necessity assessments to confirm a person's medical eligibility for waiver services.

BMS Manual § 501.9.1 Service Level Criteria provides in part:

An individual must have five deficits as described on the Pre-Admission Screening Form (PAS) to qualify medically for the ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS.

| Section | Description of Deficits | |
|---------|--|--|
| #24 | Decubitus; Stage 3 or 4 | |
| #25 | In the event of an emergency, the individual is c) mentally unable or d) physically unable to vacate a building. a) Independently and b) With Supervision are not considered deficits. | |
| #26 | Functional abilities of individual in the home | |
| a. | Eating | Level 2 or higher (physical assistance to get nourishment, not preparation) |
| b. | Bathing | Level 2 or higher (physical assistance or more) |
| c. | Dressing | Level 2 or higher (physical assistance or more) |
| d. | Grooming | Level 2 or higher (physical assistance or more) |
| e. | Continence, bowel | Level 3 or higher; must be incontinent. |
| f. | Continence, bladder | |
| g. | Orientation | Level 3 or higher (totally disoriented, comatose). |
| h. | Transfer | Level 3 or higher (one-person or two-person assistance in the home) |
| i. | Walking | Level 3 or higher (one-person assistance in the home) |
| j. | Wheeling | Level 3 or higher (must be Level 3 or 4 on walking in the home to use Level 3 or 4 for wheeling in the home. Do not count for outside the home.) |
| #27 | Individual has skilled needs in one or more of these areas: (g) suctioning, (h) tracheostomy, (i) ventilator, (k) parenteral fluids, (l) sterile dressings, or (m) irrigations. | |
| #28 | Individual is not capable of administering his/her own medications. | |

BMS Manual §501.9.1.1 Service Level Criteria provides, in part:

| Section | Description of Points |
|---------|--|
| #23 | Medical Conditions/Symptoms – 1 point for each (can have total of 12 points) |
| #24 | Decubitus – 1 point |
| #25 | 1 point for b., c., or d. |
| #26 | Functional Abilities Level 1 – 0 points Level 2 – 1 point for each item a through i. |

| | |
|-----|--|
| | <p>Level 3 – 2 points for each item a through m i (walking) must be at Level 3 or Level 4 in order to get points for j (wheeling)</p> <p>Level 4 – 1 point for a, 1 point for e, 1 point for f, 2 points for g through m</p> |
| #27 | Professional and Technical Care Needs – 1 point for continuous oxygen. |
| #28 | Medication Administration – 1 point for b. or c. |
| #34 | Dementia – 1 point if Alzheimer’s or other dementia |
| #35 | Prognosis – 1 point if Terminal |

DISCUSSION

Pursuant to policy, Applicants for the ADW program must be medically eligible for a nursing home level of care and in need of services. KEPRO, the Utilization Management Contractor (UCM) for the Bureau for Medical Services (BMS), is responsible for conducting medical necessity evaluations to confirm an individual’s medical eligibility for waiver services. ADW Home and Community-Based Services Waiver Policy Manual §501.9.1 sets forth the medical eligibility criteria: an individual must have five (5) deficits on the Pre-Admission Screening (PAS) to qualify medically for the ADW Program.

Due to the COVID-19 Pandemic, the Appellant verbally consented to complete the September 23, 2020 PAS via telephone. Those present on the call were: Mr. [REDACTED], the Appellant, Mr. Braden Scheick, RN, with KEPRO, and intermittently, Mr. [REDACTED], son-in-law to the Appellant. At the time of the PAS, the Appellant was found to have three (3) functioning deficits in the areas of *vacate a building, grooming, and continence*. Because the Appellant lacked the five (5) deficits as required by policy to establish medical eligibility for a nursing home level of care, the Appellant was denied continued eligibility for the ADW program. The Appellant and the Appellant’s Representative contested the Respondent’s denial and argued that additional PAS deficits should have been awarded in the areas of *eating, bathing, dressing, continence, walking, and vision*. The Respondent had to prove by a preponderance of evidence that the Appellant did not present with deficits in at least five (5) functioning areas at the time of the PAS.

To receive a deficit in the area of *eating*, the Appellant had to be assessed as Level 2 or higher and require physical assistance to get nourishment at the time the PAS was completed. The Appellant’s Representative and Direct Care Worker (Mrs. [REDACTED]) argued that because the Appellant has sleep apnea, when sitting for a meal the Appellant will sometimes fall asleep, thus arguing he should have been awarded an additional deficit. However, the evidence established that the Appellant did not require physical assistance to receive nourishment. As reflected on the PAS, the Appellant has the physical ability to cut his food, can feed himself with normal utensils, and does not require the use of adaptive equipment in order to receive proper nourishment. Because the Appellant did not require physical assistance to gain nourishment at the time of the PAS, a deficit could not be awarded in the area of *eating*.

To receive a deficit in the area of *bathing*, the Appellant had to be assessed as Level 2 or higher and require physical assistance. The Respondent assessed the Appellant as a Level 1, no assistance needed, on the September 2020 PAS. At the time of the PAS, the Appellant reported being able to take a shower without assistance, being able to transfer in and out of the shower/tub without assistance and having the ability to bathe all areas without assistance. Testimony provided by Mr. Scheick, RN with KEPRO, provided that because the Appellant was now reporting having the ability to bathe all areas without assistance, he alerted the Appellant of the change as compared to the previous PAS. Mr. Scheick further testified the Appellant still denied needing assistance with bathing. During the hearing, the Appellant and Appellant's Representative testified that because a handicap style shower had since been installed in the Appellant's home, the Appellant can now safely transfer in/out of the shower. However, due to the Appellant's severe back pain, the Appellant does, on occasion, still require assistance with back washing and with the washing of his lower extremities. This testimony, when taken in conjunction with the Appellant's awarded deficit in the area of *grooming* - due to the Appellant's inability to bend over to complete nail care caused by back pain, is found to be credible. Based upon evidence and credible testimony, it is found that the Appellant should have been assessed at Level 2, physical assistance, with an additional deficit awarded in the area of *bathing*.

To receive a deficit in the area of *dressing*, the Appellant had to be assessed as a Level 2 or higher and require physical assistance. The Respondent assessed the Appellant as a Level 1, no assistance needed, on the September 2020 PAS. Testimony received by Mr. Scheick on behalf of the Respondent acknowledged that because the Appellant was now reporting the ability to apply his socks and shoes without assistance, a change from the prior PAS, he (Mr. Scheick) again questioned the Appellant regarding the reported change. Mr. Scheick further testified that the Appellant continued to deny the need to have any assistance with dressing, including socks and shoes. However, during the hearing, the Appellant and Appellant's Representative testified that on occasion, the Appellant does require physical assistance when putting on socks and shoes, citing the Appellant's severe back pain and inability to bend over in order to do so. Based upon evidence and credible testimony, it is found that the Appellant should have been assessed at Level 2, physical assistance, with an additional deficit awarded in the area of *dressing*.

To be awarded a deficit in the area of *walking*, the Appellant had to be assessed as Level 3 or higher and require one or two-person assistance in the home. The evidence established that the Appellant was assessed as Level 2, without hands on assistance, but does report the use of an assistive device (cane). As no further evidence was entered to establish the Appellant required physical assistance when walking, a deficit could not be awarded in this area.

During the hearing, the Appellant's Representative also listed *continence bowel* as a contested area. While no further testimony or evidence was presented, it should be noted that because the Appellant was previously awarded a Level 3, *incontinent bladder*, on the September 2020 PAS, no additional deficit can be awarded in the area of *continence*. Additionally, the Appellant's Representative questioned the Respondent's assessment to deny a deficit in the area of *vision*. However, because *vision* is not considered one of the thirteen (13) critical areas as mandated in the Medicaid Program Regulations, a deficit cannot be considered.

CONCLUSIONS OF LAW

- 1) To be eligible for the Medicaid Aged and Disabled Waiver (ADW) program, the applicant must demonstrate deficits in at least five (5) functioning areas outlined on the Pre-Admission Screening (PAS).
- 2) At the time of the September 23, 2020 PAS, the Appellant demonstrated deficits in the functioning areas of *vacate a building, grooming, and continence*.
- 3) Because the Appellant requires physical assistance in the areas of *bathing and dressing*, the Appellant established two (2) additional ADW deficits, for a total of five (5).
- 4) Because the Appellant has five (5) deficits, he established medical eligibility for the ADW program and therefore, the Respondent must not terminate his participation.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's denial of the Appellant's medical eligibility for the Medicaid Aged and Disabled Waiver (ADW) program.

ENTERED this ____ day of January 2021.

Angela D. Signore
State Hearing Officer